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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,107	02/04/2004	Michael William Herring	4884-000003	4848
28997	7590	06/29/2005		EXAMINER
HARNESS, DICKEY, & PIERCE, P.L.C. 7700 BONHOMME, STE 400 ST. LOUIS, MO 63105			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/772,107	HERRING, MICHAEL WILLIAM
	Examiner PAUL T. CHIN	Art Unit 3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 04 February 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/20/2004</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on February 20, 2004, was filed and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. However, the provided US Patents 4,109,692 and 4,960,398 are crossed out and not considered because it appears that they are not closely related to the application. It appears that the provided US Patent 4,960,398 is the wrong number because the inventor name is Potratz, not Johnson.

### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "76" has been used to designate both "lid" (page 8, line 2) and "compartment" (page 8, line 5). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "removable container" (claim 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it

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is most nearly connected, to make and/or use the invention. Specifically, applicant states on lines 6-8 of the 25<sup>th</sup> paragraph:

The central water-resistant storage compartment 73 preferably defines a cylindrical configuration and comprises a hollow compartment 75 that is molded into the unitized body 50. The central water-resistant storage compartment 73 also comprises a lid that is preferably threaded onto an exterior portion as shown.

However, claim 17 recites "a removable container" disposed within the water-resistant storage compartment. It is unclear as to whether the container refers to the same storage compartment or other container. It appears that applicant does not disclose the "removable container" in the specification.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 3 and 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meanings of the recited phrases "the water-resistant storage compartment extends between the upper end portion and the lower end portion" (claims 3 and 14) are not clearly understood. Figures 2 and 4 clearly show that the "storage compartment" does not extend between the upper end portion and the lower end portion, as applicant recites. It is shown only the upper portion of the body.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-21, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Intravatola (6,733,017).

Intravatola (6,733,017) discloses a portable tote for carrying gas cylinders, comprising a body having an upper portion and a lower end portion (Fig. 1), a central extension 6 disposed between the upper and lower portions, the central extension providing an additional storage space, an upper extension 80 (Fig. 1), and a handle 90 disposed on the proximal end of the upper extension. Note that the handle 90 (92,94) is adjustably positioned within the body (see lines 6-40 of Col 6) and can be aligned to position the center of gravity.

Re claims 2,3, and 12, a storage compartment 50 (Fig. 2), which can be considered as a water-resistant storage compartment, extends between the upper end and lower end portions.

Re claims 5, figure 6 shows first and second cylinder storage receptacles 14,14.

Re claims 4,6, and 13, figure 6 shows a space between the receptacles, which can be considered as a storage holster, to container a torch or other tools.

Re claim 7, figure 4 shows a cutout 26 of the receptacles.

Re claims 8 and 9, figure 2 shows recesses 86,86 for mounting an axle 42 and figures 3-5 show distal extension 10 to provide stability.

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Re claims 14 and 17, figures 1-6 show a plurality of receptacles 14,14, which are being made of plastic (Col 6, lines 31-40) are water-resistant storage compartments and the cylinders are removable containers.

Re claim 21, the handle 90, means for balancing the tote, and the receptacles 14, means for providing storage space for components.

11. Claims 1-21, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Sopha (4,432,470).

Sopha (4,432,470) discloses a portable device for carrying gas cylinders, comprising a body having an upper portion and a lower end portion (Fig.1), a central extension (Fig. 3) disposed between the upper and lower portions, the central extension providing an additional storage space, an upper extension, and a handle 106 disposed on the proximal end of the upper extension. Note that the handle 34 is positioned and aligned in the center of gravity as shown in figure 2.

Re claims 2,3, and 12, a storage compartment 78 (Fig. 3), which can be considered as a water-resistant storage compartment, extends between the upper end and lower end portions.

Re claims 5, figure 3 shows first and second cylinder storage receptacles.

Re claims 4,6, and 13, figures 1 and 2 show a storage for elements 150,152 capable of containing a torch.

Re claim 7, figure 3 shows a cutout of the receptacles.

Re claims 8 and 9, figure 3 shows recesses or apertures 84,84 for mounting an axle 42 and figure 2 shows distal extension 23 to provide stability.

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Re claim 21, the handle 34, means for balancing the tote, and the receptacles 88,90, means for providing storage space for components.

12. Claims 10,12-18,20, and 21, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. (5,458,350).

Johnson et al. (5,458,350) discloses a portable device comprising a body having an upper portion and a lower end portion (Fig.1), a central extension 30 disposed between the upper and lower portions, the central extension providing an additional storage space, an upper extension, and a handle 45 disposed on the proximal end of the upper extension, and a plurality of water resistant compartments 36,36, a lid, and a removable container 33 (Fig. 4), and a storage holder (64,66,68,54). The wheels 56 can be considered as distal ends to provide stability.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stembridge et al. (3,498,523) shows a handle for carrying plurality of containers.

Hallisey (2,667,397) shows a portable device having a handle 33 and a gas cylinder assembly.

Garofalo et al. (5,947,351) shows a plurality of gas cylinders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
Art Unit 3652